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November 7, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attention: Task Force

Re: Comments to the Energy Streamling Task Force

Dear Sir or Madam:

Devon Energy Corporation (Devon) appreciates the opportunity to provide comments to the Energy Streamlining Task Force. The interest shown by our President and the Council on Environmental Quality (CEQ) in working to understand permitting and regulatory issues facing the energy industry and take action to accelerate energy-related projects is to be commended. Consistent with the goals of the President and CEQ, Devon supports taking the necessary actions while maintaining safety, public health, and protection of the environment. Our comments, which are attached, focus on the federal and state regulatory issues resulting in delays to oil and gas exploration and production that is necessary to meet the demands of U.S. consumers.

Devon is an independent energy company engaged in oil and gas exploration, production, and property acquisitions. Devon ranks among the top five U.S.-based independent oil and gas producers and is included in the S&P 500 Index.

Again, thank you for the opportunity to provide the attached comments. Should you have any questions or need additional information, please call me at (405) 552-4516.

Sincerely,

Ronald D. Truelove

Ronald D. Truelove
Environmental, Health, and Safety Manager

Attachment

COMMENTS
ENERGY STREAMLING TASK FORCE
BY DEVON ENERGY CORPORATION
SUBMITTED NOVEMBER 7, 2001

Projects/Problems:

The following requirements are a part of the regulatory process associated with Devon's oil and gas exploration and production in the U.S. that result in unreasonable and unnecessary delays.

1. National Environmental Policy Act (NEPA) environmental impact statements (EIS) required by the Bureau of Land Management (BLM) for drilling permits for wells on federal lands
2. Archeology studies required by the BLM for permits to drill on federal lands
3. Clean Air Act air quality permits required by state agencies for construction and operation of minor sources associated with oil and gas production
4. National Pollution Discharge Elimination System (NPDES) water quality permits required by state agencies for the discharge of water produced in CBM production

Entity Proposing Projects:

Devon Energy Corporation (Devon)

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Type of Project:

Natural gas and oil exploration and production

Approval/Consultation Agencies:

1. Federal Bureau of Land Management (BLM)
2. State environmental quality agencies and departments such as the New Mexico Environmental Department (NMED) Air Quality Bureau (AQB) and the Wyoming Department of Environmental Quality (WDEQ) Air and Water Quality Divisions

Brief Descriptions of Projects/Problems:

1. BLM Permitting

A variety of requirements and issues must be addressed prior to drilling and producing a natural gas or oil well on federal lands in the U.S. For example, an Application for Permit to Drill (APD) must be submitted to the BLM; the Permit to Drill must be issued by BLM; right of ways for roads and pipelines must be obtained from private, state, and federal landowners; seismic permits must be obtained from BLM (which requires an archaeological survey and may require and Environmental Assessment); and BLM permits for other surface disturbance operations must be obtained. This regulatory and permitting process is laborious, expensive, and time consuming. If the well is located within the boundary of an Environmental Impact Statement (EIS), the process can take up to a year or more to complete.

The APD must address a variety of technical geologic issues, engineering issues, and non-technical issues to the satisfaction of the BLM. If the BLM requires a new EIS before the Permit to Drill is issued, it may require up to two additional years to develop the EIS, further delaying the issuance of the necessary permits.

The operating company has no assurance that a well will be commercially viable when it commences the permitting process, and the permitting process costs as much for a well that is not commercially viable as for one that is viable.

2. Air Quality Permitting

If production rates are such that the well can be economically produced, "off-the-shelf" oilfield equipment can typically be set within a week and the well can be put into production. This typical equipment can include water tanks, oil/condensate tanks, production separators, heater treaters, and/or dehydration systems. Typically, these types of equipment have a potential to emit (PTE) air emissions in minor source amounts.

Even though the industry can respond very quickly to a new commercially viable well with production equipment, many state environmental agencies require an operator to file notices of intent (NOIs) or applications for construction permits related to air quality. State agencies prohibit construction or installation of the equipment prior to receipt of an air quality construction permit or an acceptance of the NOI. Typically, a response to an NOI takes at least 30 days, while an air quality construction permit takes 60-180 days and includes a 30-day public review period. When commercially viable wells are shut-in to wait on the air quality permitting to occur, there is a risk of downhole problems that could require costly workover activities to correct.

For example, in New Mexico, the NMED / AQB administers the federal air quality construction permitting program. The NMED requires that an NOI be filed when the potential emission rate (PER) of any pollutant exceeds 10 tons per year (T/yr) but is less than 25 T/yr. It takes the NMED at least 30 days to process the NOI. The NMED requires that a construction permit application be filed when the PER of any pollutant exceeds 25 T/yr. Including the 30-day public review and comment period, an air quality construction permit can require 60-180 days to be processed by the NMED. To be in compliance, a well would have to remain shut-in for these time periods, depending on emissions.

Some states have been working to expedite and facilitate the permitting process for oil and gas wells AQD. For example, the WDEQ / AQD also administers the federally mandated air quality construction permit program. However, WDEQ guidance for oil and gas production facilities allows construction and operation to begin after NOIs have been filed and emission controls installed at certain emission levels. The WDEQ's implementation of the federal program allows the oil and gas industry to quickly respond to energy demands.

Other environmental permits, such as National Pollution Discharge Elimination System (NPDES) permits for discharge of water produced in CBM wells can also delay operations. In the Wyoming CBM play, relatively clean water must be pumped from the coal to release system pressure and allow gas to flow. This water can be discharged on the surface only under a NPDES permit issued by the WDEQ.

3. NPDES Permitting

Federal guidelines for technology-based effluent limits for the surface discharge of water associated with oil and gas production are inconsistent with state agency guidelines. For example, EPA establishes the technology-based effluent limitation guidelines applicable to discharges from the on-shore extraction of oil and gas geographically located west of the 98th meridian, where the produced water has use for agriculture or wildlife (40 CFR Part 435, Subpart E). The State of Wyoming, Department of Environmental Quality, Water Quality Division (WDEQ/WQD) has developed technology-based effluent limits for the surface discharge of produced water. The WDEQ/WQD has imposed additional water quality effluent limitations. In order to obtain permits for surface discharge, operators must also provide signed statements from either the landowner or the Wyoming Game and Fish Department indicating the beneficial use of the discharged water for stock watering, irrigation, fish, wildlife, etc. (Chapter 7 of its Rules and Regulations). With regard to the beneficial use of surface discharge water, the EPA has delegated the NPDES program implementation and enforcement to the states and should assure that state guidelines are consistent with federal guidelines, including 40 CFR Part 435, Subpart E.

EPA, in its role of oversight of state environmental programs has imposed restrictions and requirements that exceed current federal requirements. For example, EPA Region 8 is currently developing a "Best Professional Judgment" (BPJ) determination of effluent limitations that represents Best Available Technology Economically Achievable (BAT) for natural gas production from coal seams. BPJ limits are developed when National Effluent Limitations Guidelines (ELGs) have not been established. EPA asserts that the BPJ limits are needed because the ELGs for oil and gas extraction were developed prior to the development of CBM extraction technology; however, there is no fundamental difference between gas production from coal beds and gas production from other geologic formations with respect to BAT for produced water discharge. EPA Region 8 has exceeded its authority and is incorrect in its determination that BPJ limits are required.

Prohibiting the discharge of water produced in oil and gas operations would preclude the beneficial use of the water resource for wildlife, livestock, and other agricultural uses. The EPA is considering requiring technologies that allow zero discharge for both technical and economic feasibility as a BAT throughout Region 8 even though much of the produced water from CBM is suitable for and is being used by wildlife and livestock, and for other agricultural uses. An EPA

requirement for zero discharge technology would be inconsistent with the factors it considered previously in establishing the ELGs for discharges from the on-shore extraction of oil and gas geographically located west of the 98th meridian and serves no rational purpose.

The general costing assumptions used by EPA in the study are erroneous because they fail to reflect the high degree of variability in the conditions that influence water management and treatment costs, including produced water quantity and quality, variation in water produced over time, expected well life, pond infiltration rates, and land costs. Again, there is no fundamental difference between gas production from coal beds and gas production from other geologic formations because of the considerable variability and overlap in the characteristics that influence BAT. EPA should use the same costing assumptions for all natural gas, taking into consideration the high degree of variability in the conditions that influence water management and treatment costs, including produced water quantity and quality, variation in water produced over time, expected well life, pond infiltration rates, and land costs.

EPA Region 8 has requested that WDEQ/WQD set numerical limits for specific conductance (SC) and sodium adsorption ratio (SAR) for CBM discharges although there are no such federal requirements. EPA's request is to ensure compliance with the narrative standard in Section 20 of WDEQ/WQD's current Chapter 1 rules (Surface Water Quality Standards). This narrative standard specifies that all Wyoming surface waters with potential for use as an irrigation water supply shall be maintained at a quality which supports irrigation use and shall not cause a measurable decrease in crop or livestock production. Numerical effluent limits for SAR and SC are not required by federal regulations or guidelines. The SC of CBM discharge water in the Powder River Basin of Wyoming (PRB) is typically much lower than the median baseline SC level in the receiving stream. Thus, the untreated discharge actually improves the suitability of the water for irrigation with respect to salinity. Treating the discharge water to further reduce salinity provides little or no benefit because the treated water will be out of equilibrium with the natural system and will pull more salts from the soils and sediments along the stream. The SAR of CBM discharge water in the PRB is typically higher than the median baseline SAR level in the receiving stream and does not pose a soil permeability concern because of the relatively high SC in most streams and irrigated soils in the area. Furthermore, on-going monitoring downstream of CBM discharges has shown that SAR levels decrease as discharge waters react with stream and alluvial sediments. Thus, the establishment of SC and SAR limits that require treatment would be ineffective for reducing salinity for most of the tributaries downstream of discharge points and could have detrimental impacts to soils for the limited stream reach where the salinity of stream water is reduced by treating water discharges. EPA Region 8 has exceeded its authority in requesting the WDEQ/WQD to set numerical limits for specific conductance because there are no such federal requirements, and these limits will not enhance protection of the environment.

Recommendations:

Devon plans to continue oil and gas exploration activities in response to U.S. demands. To enable Devon to be more responsive to these demands, improvements in the well and environmental permitting process, as highlighted below, should be considered.

Permits to Drill:

The BLM's APD approval process, including all related regulatory procedures, should be expedited to the fullest extent possible.

The results of the nationwide BLM permitting process benchmarking study should be applied to the processes in all BLM field offices to ensure best practices are utilized.

BLM field offices procedures should be consistent in the limitations imposed by Interim Drilling Policies.

The time limits required by NEPA on the EIS process should be implemented and enforced.

The BLM local field offices should be adequately staffed to respond to the needs of industry. While the current staff is typically very helpful, courteous, conscientious, and hard working, there are not enough of them available to perform the volume of work currently required. Unfortunately, the result is a significant delay in processing applications and approving permits.

Air Quality Permitting:

The U.S. Environmental Protection Agency (USEPA) and state environmental agencies should standardize all permit procedures related to oil and gas production facility air quality to allow construction and operations to be commenced soon after drilling is completed. The permit approval process should allow for estimating emissions based on limited data, notifying the agency, and installing emission controls when emissions are above a certain threshold. The emission controls will ensure only a limited emission rate until more accurate emissions estimates can be achieved. Based on the more accurate estimates, the ultimate approval or permit from the state agency may or may not require long-term emission controls. A program like the WDEQs should be considered nationally—it protects the environment while allowing a producer to move forward with construction and operations.

NPDES Permits:

The EPA has delegated the NPDES program implementation and enforcement to the states and should assure that state guidelines are consistent with federal guidelines, including 40 CFR Part 435, Subpart E.

EPA should reverse its determination that Best Practices Judgment effluent limits are required.

EPA Region 8 should coordinate its Best Practices Judgment study of effluent limitations that represent Best Available Technology Economically Achievable for natural gas production from coal seams to more closely align with state policies and/or change the focus of the study to the water management practices that can be applied to prevent or mitigate impacts.

EPA should not prohibit the discharge of water produced in oil and gas operations wherever the water has a beneficial use to wildlife, livestock, and for agriculture and other purposes, particularly on lands located west of the 98th meridian.

EPA should use the same costing assumptions for all natural gas, taking into consideration the high degree of variability in the conditions that influence water management and treatment costs, including produced water quantity and quality, variation in water produced over time, expected well life, pond infiltration rates, and land costs.

EPA oversight of state NPDES programs should not impose restrictions and requirements on the WDEQ/WQD that exceed current federal requirements.

EPA and state NPDES programs should treat coal bed methane the same as other types of natural gas production.

EPA should assure that state NPDES guidelines are consistent with federal guidelines, including 40 CFR Part 435, Subpart E.

EPA should not develop new and different Best Professional Judgment determinations of effluent limitations for coal bed methane because there is no fundamental difference between coal bed methane and other types of natural gas production.